WHITE & CASE

US Multilateral Trade and Policy Developments

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Contents

Trade Policy Developments

US Congress Reintroduces Bill to Restrict Imports Linked to Illegal Deforestation

On December 1, 2023, members of the US House of Representatives and Senate introduced a bill that would prohibit the import of products made from commodities produced on illegally deforested land. The bill, the "Fostering Overseas Rule of Law and Environmentally Sound Trade Act of 6 2023" ("FOREST Act of 2023"),[1] would require importers of certain specified products identified as being at high-risk for contributing to illegal deforestation to certify they have mitigated the risks that their product was produced on land that has been subjected to illegal deforestation. Targeted products include palm oil, soybeans, cocoa, cattle, and rubber. Importers would face stricter supply chain due diligence and disclosure requirements if any covered input in the product originates from countries designated as insufficiently enforcing deforestation laws. Customs and Border Protection (CBP) would deny entry to any import that cannot meet the applicable certification requirement, presuming the product to have been produced wholly or in part on illegally deforested land.

The bill also proposes to expand enforcement of US money laundering laws to target the proceeds of illegal deforestation, create a new technical assistance program to help countries enforce forestry laws, and establish a new government procurement preference for goods not linked to deforestation.

Status in Congress

The bill was introduced in the Senate by Foreign Relations Committee member Sen. Brian Schatz (D-HI) and in the House of Representatives by Ways & Means trade subcommittee ranking member Rep. Earl Blumenauer (D-OR). Republicans Sen. Mike Braun (R-IN) and Rep. Brian Fitzpatrick (R-PA) are cosponsoring, showing some amount of bipartisan support. Several US environmental groups and the US cattle industry have endorsed the bill as well. The House version was referred to the Committee on Ways and Means, along with the Committees on Foreign Affairs, Financial Services, Oversight and Accountability, and the Judiciary for relevant jurisdictional issues, while the Senate version was referred to the Committee on Finance.

Sen. Schatz, Rep. Blumenauer, and Rep. Fitzpatrick introduced a similar bill in 2021 which failed to advance despite bipartisan support in the House.[2] The FOREST Act of 2023 makes several changes to the original proposal and has gained support of some Republican senators. Whether those changes are enough for the bill to succeed in a sharply divided Congress remains to be seen.

Content of the bill

The bill includes an illegal deforestation import ban, a two-level system for certifying that subject supply chains are free of inputs linked to illegal deforestation, processes for designating products and countries as being subject to the ban and certification systems, a technical assistance program, an expansion of anti-money laundering laws, and new government procurement preferences. Key provisions of the bill are described below.

The bill defines illegal deforestation as "deforestation conducted in violation of the law (or any action that has the force and effect of the law) of the country in which the deforestation is occurring, including anti-corruption laws, laws

[1] S.3371 – FOREST Act of 2023, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/3371; and H.R.6515 – FOREST Act of 2023, 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/house-bill/6515.

[2] See details on the 2021 version of the bill at, "Schatz, Blumenauer Unveil New Bipartisan Legislation To Help Stop Illegal Deforestation Around The World, Fight Climate Change," October 6, 2021, accessible here: https://www.schatz.senate.gov/news/press-releases/schatz-blumenauer-unveil-new-bipartisan-legislation-to-help-stop-illegal-deforestation-around-the-world-fight-climate-change.

relating to land tenure rights laws, and laws relating to free, prior, and informed consent of indigenous peoples and local communities."

Import ban

The bill would establish a general ban on the import of "any product made wholly or in part of a covered commodity produced on land that undergoes illegal deforestation on or after the date of the enactment of the FOREST Act of 2023." The ban would follow a risk-based framework that prioritizes certain covered goods, commodities, and countries, of which USTR will maintain regularly update lists. CBP would enforce the ban by requiring importers of the covered products to file certain import declarations. Imports that cannot meet these declaration requirements will be denied entry on the presumption that they contain inputs derived from illegally deforested land.

Regulators are instructed to define "wholly or in part" "in a manner designed to limit the administrative burden on the importer of record while deterring illegal deforestation," creating opportunity for a *de minimis* exception to the ban.

Reasonable care declaration

Under the general entry requirement for covered products, an importer would have to certify they have "exercised reasonable care to assess and mitigate the risks that any covered commodity used to make the covered product was produced on land subject to illegal deforestation on or after such date of enactment [of the bill]." The bill instructs the Department of Homeland Security to develop guidance on what actions constitute "reasonable care," and leaves the details of the due diligence process unclear for the moment.

Additional declaration requirement for imports from countries under an action plan

If a covered product contains covered commodities sourced from a country under an action plan, the importer would face a tougher standard for overcoming the import ban. This reporting provision would require the importer to map the supply chain of the covered commodities back to their origins to certify that none of those origin points have been subject to illegal deforestation. Import declarations filed by the importer must include sufficient information to show either (i) the supply chain and origin of the covered commodity and steps taken to assess and mitigate the risk of illegal deforestation at that origin, or (ii) all possible points of origin that could have contributed to the supply chain (for when raw materials are often co-mingled) and the steps taken to assess and mitigate the risks that any of these possible points of origin are subject to illegal deforestation. The bill does not make clear how an importer would know when these additional reporting obligations would become mandatory. Further clarifications could emerge as Congress revises the bill or in the ensuing implementing regulations (should the bill pass).

CBP audits

CBP would conduct random audits of importers filing both forms of declaration. The audits will seek to ensure that the importers have retained documents showing that reasonable care was properly exercised. CBP would also establish a system for persons outside the US government to submit information alleging a violation. Before taking any enforcement action against an importer, CBP would provide the importer with notice and an opportunity for the importer to provide additional information to demonstrate compliance. The previous version of the bill from 2021 had a different enforcement system, relying on the US Department of Agriculture Animal and Plant Health Inspection Service (APHIS) to conduct audits and not providing any process for notifying importers they are subject to an investigation.

Covered products and commodities

The proposed ban and accompanying reporting requirements would apply specifically to certain covered products that contain certain covered commodities that are at a high risk of being produced on illegally deforested land. USTR would review the lists and publish updates annually to ensure that the coverage sufficiently deters illegal deforestation.

Under the bill, the initial list of covered commodities would include palm oil, soybeans, cocoa, cattle, and rubber. The covered products list would at first include products derived from palm oil, soybeans, cocoa, cattle, and rubber that are classified under the following US harmonized tariff schedule (HTS) headings and subheadings:

- Palm oil and derivative products: HTS 1511, 2905.17.00, 3823.11.00, 1513.21.00, 2905.45.00, 3823.12.00, 1513.29.00, 2915.70.01, 3823.19, 2306.60.00, 2915.90, and 3823.70.
- Soybeans and derivative products: HTS 1201, 1507, and 2304.00.00.
- Cocoa and derivative products: HTS 1803, 1806, 1801.00.00, 1802.00.00, 1804.00.00, or 1805.00.00.
- Cattle and derivative products: HTS 0201, 0206.21.00, 1602.50, 0202, 0206.22.00, 4104 0206.10.00, 0206.29.00, 4107.
- Rubber and derivative products: HTS 4001 and 4011.

Determining "action plan" countries

USTR would create the action plan country list for countries that should be subjected to the additional supply chain documentation requirements. To create the action plan country list, USTR would identify countries that "do not have adequate and effective protection against illegal deforestation for the production of commodities likely to enter the United States." USTR would consider (i) trends in illegal deforestation in that country, (ii) whether policies and practices in that country provide adequate enforcement against illegal deforestation, (iii) trends in the country's enforcement capacity, and (iv) incidence of violations of the rights of indigenous peoples and local residents connected to illegal deforestation. USTR would publish the lists to the Federal Register and reassess the list at least every two years. After it lists a country, USTR would develop an action plan for that country. The action plan would explain how the listed country can reach a level of adequate and effective protection for purposes of this bill, including specific policies and benchmarks. The listed country could then petition for its removal by demonstrating achievement of these benchmarks.

Trusted trader program

The bill would also establish a trusted trader program for importers that have demonstrated a "transparent and credible due diligence system" and have a record of compliance. Qualifying traders would have access to a streamlined import process for covered goods and commodities but will be subject to random CBP audits to ensure they are still in compliance. This trusted trader program is a new addition to the bill since its previous introduction in 2021.

Technical assistance

The bill would direct the executive branch to provide technical assistance to help countries eliminate illegal deforestation. The technical assistance programs would include Department of State grants and technical assistance for countries implementing the deforestation action plans. The amount of assistance available through this program is however uncertain, and Congress does not intend to appropriate any new funding to support the program. Instead, the proceeds of fines collected by CBP against importers penalized under the import restrictions would fund the assistance. Forty percent of the proceeds of those fines will be credited towards these assistance programs while the remaining proceeds will fund the enforcement activities at CBP, USTR, and other involved agencies. In contrast, the previous version of the bill from 2021 directly appropriated $20 million for the technical assistance work.

Illegal deforestation as a financial crime

The law also establishes illegal deforestation as a specified unlawful activity under US money laundering law, by adding it to the list of specified forms of criminal activity in section 1956(c)(7)(B) of title 18. Under this provision of US law, individuals and entities (including foreign persons engaging in transactions in the United States) who are knowingly engaging in financial transactions involving property derived from a specified unlawful activity can be subject to fines and imprisonment. The global reach of the US financial system could make this provision a significant law enforcement tool in campaigns against illegal deforestation, as well as a new compliance consideration for financial institutions.

Government procurement

The bill would also establish a general preference in US government procurement regulations that would favor products that are not made on land that has undergone deforestation. This measure goes farther than the import restriction, applying to all deforestation instead of only illegal deforestation. Under this rule, when comparing procurement proposals for products made wholly in part of a covered commodity, the government should favor proposals from bidders that can meet similar certification requirements to those required of importers.

Other US illegal forestry import rules

The FOREST Act would be a substantial expansion of US efforts to combat illegal deforestation, though it would not be the first such measure. The Lacey Act and its 2008 amendments, managed by APHIS, ban the import of illegally harvested animals and plants and requires that imports of certain animal and plant products include additional declarations.[3] In 2023, APHIS expanded the Lacy Act declaration obligations to cover various plant-derived products, including wood furniture, essential oils, and cork.

The FOREST Act's sponsors have described their bill as an extension to the Lacey Act system, applying import restrictions to products produced on land that has undergone illegal harvesting. The bill also includes a provision seeking to ensure the government is fully enforcing the Lacey Act against imports of pulp and paper products. The 2021 version of the FOREST Act in contrast included pulp as a covered commodity, which the bill's sponsors may have decided is redundant with the Lacey Act.

USTR has also involved itself directly in combatting illegal logging through various international fora. Most notably, the Forest Annex of the United States – Peru Trade Promotion Agreement allows USTR to restrict imports of timber products from Peru linked to deforestation, which USTR has used several times.[4]

A growing trend

Interest in enforcing stricter regulations against products derived from deforestation is growing in other governments as well. The EU is similarly implementing a regulation restricting imports of products derived from deforested land in 2023 under its Deforestation Regulation.[5] The United Kingdom has also adopted rules that would restrict the use of forest risk commodities and derivative products that violate local laws in UK supply chains under the UK Environment

[3] More information on the Lacey Act is accessible here: https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/lacey-act/lacey-act.

[4] Information on the environment chapter of the US-Peru TPA is accessible here: https://www.ustr.gov/peru-tpa/environment.

[5] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, accessible here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461.

Act of 2021.[6] Unlike the broader EU Deforestation Regulation, the FOREST Act of 2023 would only apply to products linked to illegal deforestation.

A more aggressive effort to restrict products linked to all forms of deforestation would be unpopular in the United States, especially among Republicans. Rep. Fitzpatrick, for example, was recently among 66 Republican and some Democrat representatives who called on USTR to ensure the EU's deforestation regulation does not interfere with market access for US exporters.[7] Rep. Blumenauer and Sen. Schatz have, on the other hand, been more receptive to the EU approach, praising EU leadership and hoping the EU's actions will help build momentum for action in the United States. For Rep. Blumenauer, keeping the FOREST Act's focus narrowly on illegal deforestation is likely intended to make the bill bipartisan.

Sen. Schatz's announcement of the FOREST Act of 2023, which includes a download link for the draft bill, is accessible here: https://www.schatz.senate.gov/news/press-releases/schatz-braun-blumenauer-fitzpatrick-introduce-bipartisan-legislation-to-help-stop-illegal-deforestation-around-the-world-fight-climate-change.

New Details on the Section 30D Clean Vehicle Tax Credit's Foreign Entity of Concern Restriction

On December 1, 2023, the Department of the Treasury ("Treasury"), Internal Revenue Service ("IRS"), and Department of Energy ("DOE") published the proposed rules governing the Foreign Entity of Concern ("FEOC") restriction for clean vehicle subsidies in the amended section 30D clean vehicle tax credit, as amended by the Inflation Reduction Act of 2022 ("IRA"). Under the IRA, a new clean vehicle placed into service after December 31, 2023 will not qualify for section 30D credits if the vehicle's battery or battery components were manufactured or assembled by an FEOC. The FEOC restriction will then expand to exclude a vehicle from the credit if the vehicle's battery cells contain any critical minerals that are extracted, processed, or recycled by an FEOC after December 31, 2024.

Overview of the new section 30D FEOC restriction

The IRA restructured the US new clean vehicle subsidy under Internal Revenue Code section 30D, removing previous volume caps on qualifying vehicle sales but imposing a variety of new local content, price, and income-based restrictions. Section 30D, as amended, provides a credit of up to $7,500 per qualifying new clean vehicle purchased, consisting of $3,750 that is conditional on the subject vehicle meeting certain critical minerals local content requirements, and $3,750 that is conditional on the subject vehicle meeting certain battery components local content requirements. On April 17, 2023, Treasury and the IRS published the Notice of Proposed Rulemaking for the Section 30D New Clean Vehicle Credit in the Federal Register, implementing these critical mineral and battery component requirements and the law's other new procedures.[8]

Beyond the local content rules explained in the April proposed rules, the IRA also disqualifies clean vehicles from coverage under the section 30D tax credit if any of the battery's minerals or components originate from FEOCs.[9] An FEOC includes, among other things, any foreign entity that is "owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation [China, Russia, Iran, or North Korea]." For the Battery Component Requirement, tax credits will be prohibited if the battery was manufactured or assembled by an

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[6] UK Environment Act 2021, accessible here: https://www.legislation.gov.uk/ukpga/2021/30/contents/enacted.

[7] House letter to USTR regarding the EU deforestation regulation, September 29, 2023, accessible here: https://steel.house.gov/sites/evo-subsites/steel.house.gov/files/evo-media-document/2023.09.29_steel_deforestation-free-regulation-eudr-letter-1.pdf.

[8] "Section 30D New Clean Vehicle Credit," 88 FR 23370 (April 17, 2023), accessible here: https://www.federalregister.gov/documents/2023/04/17/2023-06822/section-30d-new-clean-vehicle-credit.

[9] As amended by section 13401(e) of the IRA, section 30D(e)(7) of the Internal Revenue Code.

FEOC. This prohibition will be effective for vehicles placed into service after December 31, 2023. For the Critical Minerals Requirement, the credit will be prohibited if the battery contains "any" critical minerals that are "extracted, processed, or recycled" by a "foreign entity of concern." This prohibition would take effect after December 31, 2024. The April 17 proposed rule, however, did not include details on the FEOC restriction. Instead, Treasury said it would "issue guidance with respect to section 30D(d)(7) at a later date." The absence of detailed guidance on the FEOC restriction – including a full definition of "FEOC," and how automotive manufacturers must demonstrate compliance – has, until now, created significant uncertainty for companies planning investments in the electric vehicle supply chain.

Interpreting the IRA's FEOC restriction

The IRA and the 2021 Infrastructure Investment and Jobs Act ("IIJA"- the law on which the IRA's FEOC restriction is based)[10] did not provide sufficient detail for taxpayers to apply the FEOC restriction to specific projects. These laws describe an FEOC generally as a foreign entity that is owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (*i.e.*, China, Russia, Iran, or North Korea[11]) or a foreign entity that is subject to various listed US sanctions and export control designations.[12] The definition relies on the terms "foreign entity," "owned by, controlled by, or subject to the direction," "subject to the jurisdiction" and "government of a foreign country" for interpreting what entities it covers. The IIJA, however, did not define these terms. The IIJA, in effect, delegated defining these terms to the executive branch. Accordingly, how the executive branch applies these terms to complex corporate structures, including joint ventures, indirect ownership, and foreign subsidiaries of entities based in covered nations is critical to the implementation of section 30D. The December proposed rules from Treasury and the DOE fill the gaps by providing both a full definition of FEOC and directions for how companies should certify compliance with the FEOC restriction to the IRS.

DOE's proposed definition of FEOC

The DOE proposed interpretive rule clarifies the FEOC restrictions by establishing new definitions for "government of a foreign country"; "foreign entity"; "subject to the jurisdiction"; and "owned by, controlled by, or subject to the direction."[13] This proposed definition would apply both to the section 30D credits and to the IIJA section 40207 battery processing and manufacturing grant programs.

Key definitions in the proposed rule

"Foreign entity" means one or more of the following:

(i) A government of a foreign country;

(ii) A natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual;

(iii) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

[10] Infrastructure Investment and Jobs Act, Public Law 117–58, 117th Congress, https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf.

[11] The IIJA definition of "covered nation" cites section 4873(d)(2) of title 10 (renumbered from section 2533c(d)), which lists China, Russia, Iran, and North Korea, accessible here: https://www.govinfo.gov/content/pkg/USCODE-2022-title10/html/USCODE-2022-title10-subtitleA-partV-subpartI-chap385-subchapIII.htm.

[12] IIJA section 18741(a)(5)

[13] "Interpretation of Foreign Entity of Concern," 88 FR 84082 (December 4, 2023), accessible here: https://www.federalregister.gov/documents/2023/12/04/2023-26479/interpretation-of-foreign-entity-of-concern.

(iv) An entity organized under the laws of the United States that is owned by, controlled by, or subject to the direction of an entity that qualifies as a foreign entity under paragraphs (i)–(iii).

"Subject to the jurisdiction" means either:

(i) The foreign entity is incorporated or domiciled in, or has its principal place of business in, a covered nation; or

(ii) With respect to the critical minerals, components, or materials of a given battery, the foreign entity engages in the extraction, processing, or recycling of such critical minerals, the manufacturing or assembly of such components, or the processing of such materials, in a covered nation.

"Owned by, controlled by, or subject to the direction" means either:

(i) 25% or more of the entity's board seats, voting rights, or equity interest are cumulatively held by that other entity, whether directly or indirectly via one or more intermediate entities; or

(ii) With respect to the critical minerals, battery components, or battery materials of a given battery, the entity has entered into a licensing arrangement or other contract with another entity (a contractor) that entitles that other entity to exercise effective control over the extraction, processing, recycling, manufacturing, or assembly (collectively, "production") of the critical minerals, battery components, or battery materials that would be attributed to the entity.

"Government of a foreign country" includes the following:

(i) A national or subnational government of a foreign country;

(ii) An agency or instrumentality of a national or subnational government of a foreign country;

(iii) A dominant or ruling political party of a foreign country; or

(iv) A current or former senior foreign political figure.

Assessing joint ventures in third countries

The electric vehicle battery and critical mineral industries are globally integrated, so the application of these rules to joint ventures located outside of covered nations will warrant close examination. Generally, a joint venture would be an FEOC if it is a "foreign entity" and is either "subject to the jurisdiction" of a covered nation government, or is "owned by, controlled by, or subject to the direction of" the "government of a foreign country" that is a covered nation. Battery manufacturers and mineral processing and mining joint ventures formed outside of a covered nation, but that still involve those covered nations will have to carefully review their corporate structures to determine whether they meet the 25% cumulative ownership standard (or the contract standards) presented under the definition of "owned by, controlled by, or subject to the direction." The DOE's clarifying notes lay out a formulaic process for assessing these criteria, which will require a careful fact-based review for each entity. Close examination becomes especially important in situations where a covered government is several tiers of minority corporate ownership away from the subject joint venture, in which case the DOE's formulas may attenuate the assessed level of control to below the required 25% threshold.

Other contents of the proposed rule

The DOE's proposed rule includes further elaboration on the meanings of these definitions and examples of how the government will assess controlling shares and controlling licensing arrangements. The DOE also discusses the reasoning behind its proposed definitions, given that other options were available. The document also includes several additional proposals for public feedback, including proposals for the DOE to use additional authorities under the IIJA to designate specific entities as FEOC regardless of the established FEOC definition and whether the DOE should add a voluntary pre-review process in which the DOE could offer advance rulings on FEOC compliance.

Request for public feedback

The DOE proposed rule is open for public comment until January 3, 2024. Interested stakeholders can submit comments to the DOE via the rulemaking docket on regulations.gov or by email. More details on the public feedback process can be found in the Federal Register notice.

Treasury's proposed rule for applying FEOC in section 30D

Treasury's proposed rule, Section 30D Excluded Entities, provides definitions and rules for qualified manufacturers to determine the compliance of a clean vehicle with the FEOC restriction for the Section 30D tax credit.[14] The Treasury's proposed rules will operate under the definition of FEOC provided by the DOE proposed rule, as discussed above. The proposed rules explain how manufacturers should determine FEOC compliance for battery components at the time of their manufacture and trace critical mineral supply chains to determine their FEOC compliance. The proposed rule also covers processes for documenting and certifying compliance at relevant levels of the supply chain, several transitional rules that give critical minerals suppliers additional flexibility, a regime for reviewing compliance, and penalties for non-compliance.

Compliance documentation process

The general process for determining that a clean vehicle's battery is FEOC compliant follows a three-step process, described below. The supply chain tracing process described in the proposed rules also treats battery cells separately from other battery components because the battery cells are the component that contains the applicable critical minerals. For battery components, these rules will enter effect on January 1, 2024, and for critical minerals and their associated constituent materials, the rules will enter effect on January 1, 2025.

1. The manufacturer determines whether the relevant battery components and applicable critical minerals are FEOC-compliant, following the rules for FEOC-compliant battery components and applicable critical minerals.

2. The manufacturer physically tracks the FEOC-compliant battery components and applicable critical minerals to the specific battery cells that are assembled from them, following the rules for FEOC-compliant battery cells. The proposed rules for this step of the process temporarily allow (until January 1, 2027) an allocation-based determination for applicable critical minerals for when manufacturers are unable to physically track the specific minerals or their associated constituent materials to the battery cell.

3. The manufacturer tracks the battery cells and other battery components to the specific batteries, following the rules for FEOC-compliant batteries.

The Treasury proposed rule provides a transitional process for new clean vehicles placed into service between December 31, 2023, and January 1, 2025. This 2024 transition rule would allow manufacturers to bypass certain physical tracking requirements for batteries and battery cells while certifying FEOC compliance, expediting certification for the fast-approaching entry into force.

Upfront review and battery ledger

[14] "Section 30D Excluded Entities," 88 FR 84098 (December 4, 2023), accessible here: https://www.federalregister.gov/documents/2023/12/04/2023-26513/section-30d-excluded-entities.

Starting in 2025, FEOC enforcement will switch to an upfront review system to strengthen compliance. Under this system, automotive companies will submit attestations, certifications, and other documentation demonstrating FEOC-compliant battery production and procurement capacity. Treasury, with analytical support from DOE specialists, will review these submissions and produce a ledger tracking the number of compliant batteries that an automotive manufacturer has each year. Automakers will be able to sell FEOC-compliant clean vehicles up to the number of FEOC-compliant batteries reported and recorded in their applicable compliant-battery ledger.

Non-traceable battery materials exception

Treasury also proposes a transition rule to allow certain "non-traceable battery materials" to bypass the FEOC restriction until January 1, 2027. Neither the due diligence requirement nor the FEOC-compliance designation would apply to these materials before that time. Non-traceable battery materials are certain low-value materials that have diverse sourcing and comingle in manufacturing so much so that current industry practices cannot identify the original sourcing. Treasury and the DOE believe it is not currently feasible for manufacturers to trace and certify these materials. The proposed list of these materials includes applicable critical minerals that are contained in electrolyte salts, electrode binders, and electrolyte additives, as well as potentially other low-value electrode active materials. The proposed rule asks for public input on whether it should include other materials and if this approach is the best option available. The proposed rule further suggests that Treasury is considering alternative approaches to handling this supply chain tracing challenge.

Penalties for non-compliance

Automakers that violate the rules may lose the ability to qualify for section 30D credits for the subject vehicle and potentially other vehicles as well. Under the proposed rule, the IRS may revoke qualification for section 30D credits from a manufacturer or from a specific vehicle class due to "fraud, intentional disregard, or gross negligence with respect to any requirements of section 30D and the regulations and guidance thereunder[.]" Manufacturers that lose access to the tax credits due to such actions would have to reapply for qualification. The rules also provide processes for correcting inadvertent errors.

Request for public feedback

The Treasury proposed rule is open for public comment until January 18, 2024. Treasury will consider timely feedback in developing the final rules. Stakeholders may also request that Treasury hold a public hearing on the proposed rules. More details on the public feedback process can be found in the Federal Register notice.

Updated revenue procedure

The IRS also issued an updated revenue procedure, Revenue Procedure 2023-38, for submitting information to the IRS on clean vehicles, previously owned clean vehicles, and commercial clean vehicles.[15] The revenue procedure provides procedural information for how manufacturers of new clean vehicles should comply with the various reporting, certification, and attestation requirements under the FEOC restriction and Treasury proposed rule. This revenue procedure also consolidates the procedures for all three of the IRA's clean vehicle credits into one document (the other two being the section 45W credit for commercial clean vehicles and the section 25E previously owned clean vehicles credit, neither of which is subject to the FEOC restriction).

Implementing the IRA's amended section 30D

The proposed rules provide important clarity for companies assessing how their projects can meet the strict standards of the section 30D clean vehicle tax credits and decide on making new investments. Incomplete sections of

[15] Revenue Procedure 2023-38, accessible here: https://www.irs.gov/pub/irs-drop/rp-23-38.pdf.

the proposed rules also demonstrate, however, that the administration is still grappling with how to balance the IRA's strict national security restrictions with the often-conflicting green energy adoption goals. The proposed rules invite public comments on several issues related to difficult-to-track minerals and rules evasion, which will require additional development and clarification before the government can completely implement the IRA's FEOC limits.

Both rules are in proposed form and the agencies are providing stakeholders an opportunity to provide feedback, creating a possibility that the agencies will make further changes before the rules are finalized. Despite this possibility for future changes, taxpayers may rely on these proposed rules for vehicles placed into service before the IRS and DOE issue the final regulations. Considering the imminence of the entry into force of the IRA's FEOC restriction for batteries and battery components, these proposed rules will likely be the guidance on which taxpayers rely for now.

Treasury's IRA Implementation Agenda

Issuing these rules was part of Treasury's phase two plan for implementing the various tax code changes required by the IRA.[16] Under phase two, which lasts from September to December 2023, Treasury still intends to issue guidance for the Section 45V Clean Hydrogen Production Tax Credit, the Section 40B Sustainable Aviation Fuel Credit, and the Section 45X Advanced Manufacturing Production Credit. Treasury recently issued new guidance for transferring the clean vehicle tax credits to dealers,[17] the Section 45L New Energy Efficient Home Credit,[18] and updates to the energy credits under the Section 48 Investment Tax Credit (ITC).[19] Beyond issuing these proposed rules, Treasury is also reviewing public comments submitted in response to the previously issued proposed rules and developing the relevant final rules. Treasury has not yet specified when it will issue final rules, including final versions of the April section 30D proposed rules.

US Congress Reintroduces Bill for Carbon Price and Border Adjustment

Democrats in Congress reintroduced the Clean Competition Act on December 6, 2023. The bill would amend the US Internal Revenue Code of 1986 to establish a partial domestic greenhouse gas (GHG) emissions tax paired with a border adjustment. Rather than applying a GHG tax to all emissions, this approach would establish a performance standard for GHG emissions intensity for each covered industry, and then tax producers and importers that exceed this standard. Covered sectors include fossil fuels, refined petroleum products, petrochemicals, fertilizer, hydrogen, adipic acid, cement, iron, steel, aluminum, glass, pulp, paper, and ethanol. The border adjustment would also apply the tax to downstream products that contain inputs from the covered sectors. The methods by which the bill proposes to apply this tax would impact importers more than domestic producers and would also create additional challenges for exporters from non-market economies like China and Vietnam. Contrasting with this risk of discriminatory treatment, the bill would spend the proceeds of the emissions tax to finance decarbonization programs for both US industry and for developing countries.

Status in Congress

Senator Sheldon Whitehouse (D-RI) and Representative Suzan DelBene (D-WA) led the introduction of the bill, with Senators Brian Schatz (D-HI) and Martin Heinrich (D-NM) cosponsoring in the Senate and Representatives Don Beyer (D-VA), Kathy Castor (D-FL), and Ami Bera (D-CA) cosponsoring in the House. The bill has been endorsed by

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[16] Remarks by Assistant Secretary for Tax Policy Lily Batchelder on Phase Two of Implementation of the Inflation Reduction Act's Clean Energy Provisions, September 8, 2023, accessible here: https://home.treasury.gov/news/press-releases/jy1723.

[17] "Transfer of Clean Vehicle Credits Under Section 25E and Section 30D," 88 FR 70310 (October 10, 2023), accessible here: https://www.federalregister.gov/documents/2023/10/10/2023-22353/transfer-of-clean-vehicle-credits-under-section-25e-and-section-30d.

[18] "Section 45L New Energy Efficient Home Credit," Notice 2023-65 (September 27, 2023), accessible here: https://www.irs.gov/pub/irs-drop/n-23-65.pdf.

[19] "Definition of Energy Property and Rules Applicable to the Energy Credit," 88 FR 82188 (November 22, 2023), accessible here: https://www.federalregister.gov/documents/2023/11/22/2023-25539/definition-of-energy-property-and-rules-applicable-to-the-energy-credit.

environmental groups like the Environmental Defense Fund, Sierra Club, National Wildlife Federation, and some US industry interests. Other high-emissions industries, including the steel industry, have objected to the bill's domestic carbon tax.[20] The bill's sponsors also introduced it in the previous legislative session to little success. The 2022 version never passed its assigned Senate committee and was never introduced in the House.[21]

This year's reintroduction follows the introduction of a Republican bill for an emissions-based tariff, the Foreign Pollution Fee Act of 2023.[22] Though the bills are significantly different, Democrats have said they are willing to negotiate. The sponsors of the two bills have branded them similarly, focusing on how the border tax can protect US companies from foreign competitors that have higher GHG emissions intensities. Both bills' sponsors have focused particularly on China, and the GHG accounting systems in both bills would likely lead to Chinese exporters facing relatively higher charges. Both bills also propose an emissions performance standard derived from the current US emissions levels, rather than creating a general price on GHG emissions. However, the bills diverge significantly in that the Democrat bill includes a domestic emissions fee, which most Republicans strongly oppose. In the current divided Congress, an emissions tax bill could only succeed if it can build bipartisan support.

Overview of the 2023 Clean Competition Act

The bill proposes a list of products that would be covered, establishes a domestic tax, a border adjustment for the tax, and two green energy subsidy programs, summarized below. The bill would create GHG emissions intensity performance targets for each of its covered industries, then apply a tax on producers that exceed that level. Domestically, the Department of the Treasury (Treasury) would assign the tax on a per facility basis, while for imports, Treasury would assign the charge on the specific imported good. Domestic producers and importers could apply for narrower treatment of their products and industries, following petition processes included in the bill.

Covered sectors

The bill's tax would cover primary production across various heavy industries associated with high GHG emissions. These sectors are classified by their North American Industry Classification System (NAICS) six-digit codes.[23] The covered sectors are:

- Petroleum extraction (NAICS 211120),
- Natural gas extraction (NAICS 211130),
- Surface coal mining (NAICS 212114),
- Underground coal mining (NAICS 212115),
- Pulp mills (NAICS 322110),
- Paper mills (NAICS 322120),

[20] "AISI Comments on "Clean Competition Act" Introduced Today," December 6, 2023, American Iron and Steel Institute, accessible here: https://www.steel.org/2023/12/aisi-comments-on-clean-competition-act-introduced-today/.

[21] S.4355 - Clean Competition Act, 117th Congress (2021-2022), accessible here: https://www.congress.gov/bill/117th-congress/senate-bill/4355.

[22] S. 3198 - "Foreign Pollution Fee Act of 2023," 118th Congress, accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/3198/text.

[23] NAICS is an industry classification system used in North America to provide a consistent data framework among the United States, Mexico, and Canada. It groups industries together by production process instead of product. Users can generally map NAICS codes to Harmonized System codes following guides produced by the US Census Bureau, accessible here: https://www.census.gov/foreign-trade/reference/codes/index.html. NAICS codes should also generally match the United Nations' International Standard Industrial Classification of All Economic Activities (ISIC) for the first few digits. The ISIC correspondences are accessible here: https://unstats.un.org/unsd/classifications/Econ/isic.

- Paperboard mills (NAICS 322130),
- Petroleum refineries (NAICS 324110),
- Asphalt paving mixture and block manufacturing (NAICS 324121),
- Asphalt shingle and coating materials manufacturing (NAICS 324122),
- All other petroleum and coal products manufacturing (NAICS 324199),
- Petrochemical manufacturing (NAICS 325110),
- Hydrogen production (classified under industrial gas manufacturing - NAICS 325120),
- Ethyl alcohol manufacturing (NAICS 325193),
- Adipic acid manufacturing (classified under other basic organic chemical manufacturing - NAICS 325199),
- Nitrogenous fertilizer manufacturing (NAICS 325311),
- Glass (NAICS 327211, 327212, 327213, or 327215),
- Cement (NAICS 327310),
- Lime and gypsum product manufacturing (NAICS 327410 and 327420),
- Iron and steel (NAICS 331110), and
- Aluminum (NAICS 331313 and 331314).

The 2023 version of the bill was updated to include surface coal mining (in addition to underground mining) and expands coverage of the aluminum sector to include secondary smelting and alloying activities (the 2022 version of the bill only covered aluminum refining and primary production). The new bill also updates the paper mill codes to account for their consolidation in the 2022 NAICS codes revisions.

Calculating domestic emissions

Starting in 2026, covered domestic entities would submit their annual Environmental Protection Agency (EPA) Greenhouse Gas Reporting Program (GHGRP) emissions data filings to Treasury, along with electricity consumption data (because GHGRP does not include emissions from Scope 2 electricity use) and the weight of covered goods produced in the subject year. For each year, Treasury would calculate the GHG emissions intensity of each covered facility as an amount equal to the quotient of the covered emissions of the facility divided by the total weight of covered primary goods produced at the facility. GHG emissions under this bill are expressed in metric tons of carbon dioxide-equivalent emissions.[24]

Some of the covered NAICS-6 industry sectors are broad and may include multiple industries, so the bill would also allow entities to petition Treasury for their industry to be treated separately from the rest of their applicable NAICS-6 sector. A facility that produces multiple goods may also petition for the emissions of those goods to be tracked

[24] Carbon dioxide equivalent units includes the existing determinations in Table A-1 to Subpart A of Part 98, title 40, of the Code of Federal Regulations, accessible here: https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-98/subpart-A/appendix-Table A-1 to Subpart A of Part 98, and the quantity of methane that has the same global warming potential over a 20-year period as 1 metric ton of carbon dioxide.

separately. If operating carbon capture and storage systems, an entity may also subtract the amount stored from their emissions intensity calculations.

In 2025, Treasury would use this information to calculate a US GHG intensity baseline in each covered industry, which would include Scope 1 and Scope 2 emissions, for each covered sector. The emissions intensity calculation would be the quotient of the covered emissions of all subject facilities divided by the total weight of the covered primary goods produced. The baseline determined for 2025 would then become the performance target against which emissions levels for future years are set.

Calculating foreign emissions

Treasury would then have to produce estimates of foreign GHG emissions to compare to the domestic emissions level for the border adjustment. The bill proposes two GHG calculation methods that Treasury could use for each economy from which the United States imports covered goods, based on the availability of data and whether the country is a non-market economy.

If Treasury can obtain transparent, verifiable, and reliable information with respect to any covered national industry in the country of origin and that country is a market economy, then such countries can use their own industry specific or company specific data for setting their emissions levels. The bill would also allow exporters from these countries to apply for individual treatment rather than paying the charge based on their industry average, which would likely be a popular approach among companies with below-average emissions.

If a country is a non-market economy or detailed emissions data is unavailable, then Treasury would use a country-wide carbon intensity estimate for the country.[25] Treasury would determine this value by dividing the estimated total GHG emissions of the subject country by its gross domestic product, taxing all covered imports from that country according to how much that emissions intensity level diverges from the emissions level of the comparable US industry.

Target emissions level

The bill proposes a target emissions performance level for each covered industry, which would start from the US industry's actual emissions level and then gradually decline. The baseline level is set at 100% of the US emissions level in 2025. Then, between 2026 and 2029, the target level would fall by 2.5 percentage points per year. After 2029, the target level would decrease by 5 percentage points per year until the target rate reaches zero emissions. Under this calculation, the emissions target would be 90% of the 2025 level in 2029, 50% of the 2025 emissions level in 2037, and then net zero in 2047.

GHG emissions price

The bill would set a universal price on GHG emissions that exceeds the target emissions performance level. This price would start at $55 per metric ton. The real (inflation adjusted) price of emissions will then rise by 5% per year. Treasury would calculate this annual increase by adding an amount equal to the previous year's tax multiplied by the annual Consumer Price Index (a measure of US inflation) plus 5 percentage points every year. This exponentially increasing tax level, coupled with the falling target emissions level, means a gradually larger tax will apply to a gradually larger share of domestic industry and imports. By 2037, the target year for 50% emissions reduction, the real price of the emissions tax will have almost doubled to $99 per metric ton.

Implementing the domestic emissions fee

[25] The list of countries currently designated as non-market economy countries is accessible here: https://www.trade.gov/nme-countries-list.

The carbon tax presented in this bill is not an economy-wide emissions tax in the traditional sense. Instead, facilities that exceed their sectors' target emissions performance levels would pay a tax based on how much they exceed the target. Treasury would calculate the fee by determining the amount by the which the emissions intensity of a specific facility exceeds that of its industry's performance target (or the specific good if the company has petitioned for narrower treatment). Treasury would then multiply that excess emissions margin by the total weight of covered goods and the carbon price to determine the total tax owed.

This tax, however, would not apply to all domestic producers in the covered industries. The bill defines covered domestic entities as those that produce the covered primary good and currently report GHG emissions data under the GHGRP. The GHGRP has high reporting thresholds, usually applying only to facilities that have GHG emissions exceeding 25,000 metric tons per year.[26] A similar exclusion for smaller foreign producers does not appear in the bill, suggesting the tax would apply to more foreign producers than domestic producers.

Border adjustments

The border adjustment for this tax would take the form of a rebate of the fees paid by US exporters on their US production and impose a fee on imports of covered goods produced in other countries.

Under the bill, when a person exports a covered primary good from the United States which was produced in an eligible facility and has paid the emissions fee, Treasury would issue a rebate of the fees paid. Similarly, when a finished good that paid an emissions charge or that contains a covered primary input that paid an emissions charge is exported, Treasury would similarly issue a rebate based on the share of the finished good that is a covered primary input. The bill structures these rebates as if they are refunding an overpayment of the original fee paid. Rebate coverage for finished goods is a new addition to the 2023 version of the bill. The 2022 version would have only issued rebates for exports of primary goods.

US imports of the covered primary goods would be subject to the charge starting in 2025 and imported finished goods would be covered starting in 2027. The import fee would apply to specific products within the covered NAICS codes (matching those NAICS codes to Harmonized System codes), rather than at the facility level. Importers would pay the emissions charge based on the amount by which their product's industry or national emissions exceed the relevant US industry emissions performance target. For finished goods, the charge would apply to the portion of the finished good that is the primary good component, measured by weight.

The bill would also establish a *de minimis* for imports of finished goods that contain small amounts of covered inputs, reducing administrative burden and providing a transitional period. In 2027 and 2028, the finished goods charge would only apply when the covered primary inputs either weigh more than 500 pounds or for which more than 90% of the total value of all material inputs in the finished good are covered primary goods. In 2029 and 2030, the *de minimis* levels would fall so the charge would apply to finished goods containing more than 100 pounds of covered primary goods or for which more than 75% of the total value of all material inputs in the finished good are covered primary goods. Finally, for years after 2030, the bill would allow Treasury to lower the *de minimis* level further below the 2029-2030 level at its own discretion. The bill does not establish a minimum level for the *de minimis* after 2030, suggesting that Treasury could choose to eliminate the exception altogether. In contrast, the previous version of the bill from 2022 had a permanent *de minimis* at 100 pounds of covered primary goods inputs.

[26] More details on industry coverage and size thresholds for the GHGRP is accessible here: https://ccdsupport.com/confluence/pages/viewpage.action?pageId=93290546.

Imports from least developed countries (LDCs), including LDC-origin components of finished goods imported from elsewhere, would be exempt from the import charge unless the LDC exports more than 3% of total global exports of one of the covered primary goods[27]

Carbon clubs

The bill would establish a system for carbon clubs, a new addition to the 2023 version of the bill. Treasury would determine if a foreign country has implemented an explicit cost on GHG emissions that is materially similar to the emissions charges imposed in this bill. If the covered import has already paid an emissions charge under such a system in its country of origin, Treasury could wholly or partially exempt the covered primary good from the US import charge. Nevertheless, the bill provides scant information about how Treasury should negotiate these carbon clubs or determine whether a GHG pricing system is "materially similar" to the one in the bill.

Decarbonization subsidies

The bill would establish a grant system to help finance industrial emissions reduction. Starting in fiscal year 2026, the bill would appropriate an amount of money equal to the emissions fee revenue in the previous year to funding decarbonization projects for US industry and for developing countries. The domestic portion would be a competitive grant program that awards money for investments in new technologies that either reduce the carbon intensity of existing facilities or ensure that proposed facilities achieve best-in-class emissions levels. The domestic grant program would receive 75% of the revenue and would be modeled after the EPA's Diesel Emissions Reduction Act's title VII subtitle G grant program. The other 25% of the revenue would be spent on an economic support fund for developing countries. The Department of State would disburse the fund through bilateral and multilateral assistance programs to support climate and clean energy programs.

Growing international interest in carbon pricing and border adjustments

The European Union was the first major economy to implement a carbon border adjustment system to compliment a domestic emissions pricing regime. While other economies have been debating adopting similar policies for some time, the EU's move may now be prompting other countries to consider more seriously adopting their own carbon pricing regimes. The United Kingdom, Australia, Canada, various developing countries, and the United States are all considering such systems. Part of these countries' motivation may be that without comparable emissions taxes, the EU will be effectively collecting taxes on production in their economies. The new proposal of carbon clubs in the 2023 version of the Clean Competition Act may be a direct effort to resolve this concern.

Though the Clean Competition Act and the EU's Carbon Border Adjustment Mechanism (CBAM) are both carbon pricing systems with border adjustments, the two systems are substantially different. The Clean Competition Act would apply to a wider variety of primary products than the CBAM currently does and would also apply to finished goods. The two systems also have substantially different domestic pricing systems, with the Clean Competition Act enforcing a flat fee on emissions that exceed a set performance standard and the EU connecting CBAM to the market-driven Emissions Trading System (ETS). Leaders in the two economies who hope to reconcile these systems, or leaders of third countries who want to align with both, may find the task challenging.

Sen. Whitehouse's announcement of the Clean Competition Act, including a draft of the bill, is accessible here: https://www.whitehouse.senate.gov/news/release/whitehouse-and-delbene-reintroduce-carbon-border-adjustment-bill-to-boost-domestic-manufacturers-and-tackle-climate-change.

[27] LDC is defined in section 124 of the Foreign Assistance Act of 1961, accessible here: https://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter32&edition=prelim, which has criteria comparable to the United Nations LDC classification, the list of which is accessible here: https://unctad.org/topic/least-developed-countries/list.

Senators Introduce Bill to Strengthen US Customs Procedures

On December 7, 2023, Senators Bill Cassidy (R-LA) and Sheldon Whitehouse (D-RI) introduced the Customs Modernization Act of 2023 (CMA), a bipartisan bill amending the Tariff Act of 1930 to strengthen customs enforcement, improve data exchange, and reduce the burdens of certain regulatory processes for importers.[28] The CMA builds on lengthy consultations with US Customs and Border Protection (CBP) and private sector stakeholders, including outcomes of the CBP 21st Century Customs Framework (21CCF) government-industry task force process. If approved, the CMA would be the most significant update to the laws governing US import/export procedures since 1993. US industry representatives have cautioned that the bill focuses disproportionality on tightening enforcement and are lobbying for the bill to include actions on trade facilitation priorities as well.

Situation in Congress

Senators Cassidy and Whitehouse introduced the bipartisan bill to the Senate on December 7, 2023, at which point it was referred to the Committee on Finance. There is not yet a House version.

Senator Cassidy originally raised his modernization plan in November 2021.[29] The 2021 version included tightening supervision of e-commerce companies, adding new data retention requirements for importers and import facilitators, expanding penalties, and adding new documentation requirements to *de minimis* shipments. One of the main challenges of this bill was its disproportionate focus on strengthening customs enforcement, and mostly ignored commercial needs. Amid those debates, a final bill did not move forward, and consultations continued through 2022 and 2023. Despite this delay and multiple edits and expansions of the bill, the new CMA remains heavily focused on strengthening enforcement.

As the CMA makes its way through Congress in 2024, further proposals on trade facilitation interests may emerge. In announcing the CMA, Sen. Cassidy recognized its lack of trade facilitation measures, and said he would support a separate bipartisan trade facilitation framework that Congress will unveil in 2024. Discussions with US industry on what these bills could contain are still taking place.[30]

Enforcement prioritization

Congressmembers are increasingly concerned about forced labor, counterfeiting, illicit drugs, and illegally harvested commodities[31] and are looking at new tools and resources that could help stop these products at the border. Legal changes may include sharing more data between CBP and traders, increasing supply chain transparency, expanding penalties, and changing *de minimis* rules, among other options. The challenge in designing new legislation is balancing the desire for better security with the need to keep cargo flowing quickly. These law enforcement goals have been gradually taking priority over trade facilitation objectives, however, as politicians have become more focused on economic security and responding to the rise of China.

Sen. Whitehouse's comments on the CMA's introduction highlighted security concerns, saying "we're in need of comprehensive customs modernization to better stop kleptocrats, cartels, and international criminals from moving

[28] "S.3431 - A bill to amend the Tariff Act of 1930 to strengthen the authorities of U.S. Customs and Border Protection to enforce the customs and trade laws of the United States, and for other purposes," 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/3431.

[29] "Customs Modernization Act of 2021," draft copy, accessible here: https://documents.nam.org/iea/Cassidy Customs Modernization Bill Discussion Draft.pdf.

[30] See, for example, "U.S. Chamber Letter on Customs Modernization Priorities," June 6, 2023, accessible here: https://www.uschamber.com/security/supply-chain/u.s.-chamber-letter-on-customs-modernization-priorities.

[31] "Wyden Hearing Statement on Stopping Illegal Trade at the Border to Protect American Workers," February 16, 2023, Senate Committee on Finance, accessible here: https://www.finance.senate.gov/chairmans-news/wyden-hearing-statement-on-stopping-illegal-trade-at-the-border-to-protect-american-workers.

illicit products into the United States" and that a crackdown on imports will promote fair competition. Sen. Cassidy also highlighted how the bill will help fight fentanyl trafficking and detect products made with forced labor.[32]

Content of the bill

The bill's sponsors intend for it to increase CBP access to international supply chain data, expand the government's use of collected data, as well as make supply chains more visible and easier to target in enforcement actions and strengthen oversight of *de minimis* shipments. A summary of the bill's key components is below.

- **Modifying entry documentation**: These amendments would clarify certain existing filing and entry requirements and establish a new provision allowing CBP to issue regulations requiring importers of record to file pre-entry advance information on shipments. The bill would also expand the purposes for which the government can use pre-entry data from only cargo security to include enforcement of all other trade and customs laws as well. Under current rules, CBP usually receives data about entries at an import's time of entry by the importer. The bill's sponsors intend for the CMA's amendments to give CBP better visibility into supply chains and advance information, which they believe will improve enforcement and make entry processes more predictable for importers.
- **Extended e-commerce recordkeeping**: The bill would clarify that recordkeeping and document production requirements apply to e-commerce platforms and other entities that facilitate transactions. The bill's authors intend for this to help CBP target illegal imports, such as counterfeit products.
- **Strengthening import prohibitions**: The bill would clarify CBP's authority to provide information to relevant parties when it suspects goods are counterfeit; authorize alternatives to seizure for IPR-infringing goods, including permitting summary forfeiture for certain goods; and expand liabilities for IPR infringements, including by clarifying civil penalties.
- **Expanding liabilities for violating customs law**: The bill would expand penalties for violating customs and trade laws, including by clarifying that all persons submitting false entry reports are liable for civil penalties, removing the maximum penalty cap for gross negligence, clarifying standards for false claims and negligence (including by aligning definitions with those of the False Claims Act), allowing CBP to expand Enforce and Protect Act investigations to other importers beyond the original subject importer, and establishing new penalties for obstructing CBP investigations.
- **New data reporting requirements for *de minimis* shipments**: The bill would introduce new, more costly data reporting requirements for imports subject to *de minimis* entry (i.e., imports of less than $800 in value). The bill would clarify that CBP may issue regulations requiring that additional data be submitted on *de minimis* entries, define the types of information that may be collected and for what purposes it may be used, and establish penalties for violating these filing requirements. The bill also establishes a new streamlined process for disposing of detained *de minimis* shipments when CBP does not receive timely responses from importers.
- **Protesting CBP decisions**: The bill would clarify that the avenue for challenging an exclusion order is through the International Trade Commission (ITC), and that Enforce and Protect Act determinations are final unless challenged at the Court of International Trade (CIT).
- **Includes the Manifest Modernization Act**: On November 2, 2023, Sens. Cassidy and Whitehouse also introduced the Manifest Modernization Act, a companion bill that proposes CBP should publicize more data on

[32] "Cassidy, Whitehouse Introduce Bill to Bring U.S. Customs Laws into 21st Century, Stop Illicit Trade," December 8, 2023, accessible here: https://www.cassidy.senate.gov/newsroom/press-releases/cassidy-whitehouse-introduces-bill-to-bring-u-s-customs-laws-into-the-21st-century-stop-illicit-trade/.

US importers and cargoes.[33] Under this bill, air, rail, and truck manifests would undergo the same public disclosure as ocean vessel manifests. Activists seeking tougher enforcement of the Uyghur Forced Labor Prevention Act (UFLPA) and US sanctions have used the publicly disclosed ocean shipping data to monitor and identify potential legal violations and report them to CBP. Those groups have been pushing for Congress to widen these trade reporting obligations to other transport types so they can expand their monitoring.[34] The business community has meanwhile been pushing in the opposite direction, asking for increased data privacy over concerns about trade secrets protection and transport security. Though the Senators introduced the Manifest Modernization Act as separate legislation in November, they have now also included it in section 504 of the CMA.

A draft of the bill, as introduced to the Senate, is accessible here: https://www.cassidy.senate.gov/wp-content/uploads/2023/12/ROS23F60.pdf.

US Congress Advances Bill to Counter Foreign Economic Coercion

The House Committee on Foreign Affairs reported the Countering Economic Coercion Act of 2023 to the House floor on December 13, 2023. The Committee's approval is a crucial step necessary for the bill to succeed and shows that it has strong bipartisan support. If passed into law, the bill would empower the president to assist countries that are facing economic coercion, including by changing tariff levels, easing trade regulations, and retaliating against the coercing country. The bill was introduced in the House of Representatives and Senate in February 2023.

Status of the bill

In the House of Representatives, the bill was introduced as H.R. 1135 on February 23, 2023, by the co-sponsors Representatives Gregory Meeks (D-NY), Tom Cole (R-OK), and Ami Bera (D-CA), again showing its bipartisan support.[35] The Committee on Foreign Affairs, which has primary responsibility for considering the bill, approved an amended version of it on December 13, 2023 by a vote of 35 to 8.[36] The few Republicans who opposed the bill expressed reservations about how the bill would increase the president's power to decide US trade policy without input from Congress. Some of those Republicans also said they still support the intent of the bill but argued for alternative approaches where Congress would retain its powers over tariffs and trade policy.

The Senate version of the bill, S. 295, was introduced on February 7, 2023 and referred to the Foreign Relation Committee.[37] It has bipartisan sponsorship from Senators Todd Young (R-IN) and Chris Coons (D-DE). Though the Senators had hoped to move the bill through committee quickly, it has not yet moved forward.

Congress reportedly discussed the bill with the US Trade Representative, State Department, and other Executive Branch agencies during its development. Senator Young stated in a Congressional hearing in early February that he believed the Biden administration supports the bill and added that he and Senator Coons are in close contact with the administration on its progress.[38]

[33] "S.3217 - Manifest Modernization Act of 2023," 118th Congress (2023-2024), accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/3217.

[34] "Open Letter to CBP on Trade Data Transparency," October 20, 2022, Uyghur Human Rights Project, accessible here: https://uhrp.org/statement/open-letter-to-cbp-on-trade-data-transparency/.

[35] H.R.1135 - Countering Economic Coercion Act of 2023, accessible here: https://www.congress.gov/bill/118th-congress/house-bill/1135.

[36] The House Committee on Foreign Affairs approved an amended version of the original bill, which is accessible here: https://docs.house.gov/meetings/FA/FA00/20231213/116674/BILLS-1181135ih-U2.pdf.

[37] S.295 - Countering Economic Coercion Act of 2023, accessible here: https://www.congress.gov/bill/118th-congress/senate-bill/295.

[38] "Evaluating U.S.-China Policy in the Era of Strategic Competition," Foreign Relations Committee, US Senate (February 9, 2023), accessible here: https://www.foreign.senate.gov/hearings/evaluating-us-china-policy-in-the-era-of-strategic-competition.

Responding to a new economic security risk

Concerns about China's unilateral use of coercive economic measures in political disputes has grown in recent years, following incidents with Lithuania, Australia, Taiwan, and South Korea. A recent report from the Australian Strategic Policy Institute, *Countering China's Coercive Diplomacy*, found that China has targeted 19 countries and the EU with coercive economic pressure between 2020 and 2022.[39] The European Union has already begun responding to these concerns as they relate to coercion targeting their own member states through the anti-coercion instrument, which the EU adopted in October 2023.[40] The United States is also in discussion with the EU through the US-EU Trade and Technology Council (TTC) and with other allies through the G7. Speaking in the House Foreign Affairs Committee during the bill's approval, Rep. Meeks remarked that the Countering Economic Coercion Act could become a model for the G7. With frictions growing between the United States and China, as well as the new sanctions campaigns targeting Russia, coalitional efforts by each side to counter the others' measures are likely to continue.

Content of the bill

The key measure in the bill is a new authority that would provide the president with policy tools that could be used quickly to provide economic relief to targeted countries and retaliate against countries that are using coercive economic methods. Under the bill, the president would have the power to determine whether a partner country is being targeted by economic coercion by a US adversary (specifically China under the amended House version of the bill) and then take the following actions with Congressional review:

- Decrease certain US import tariffs or modify tariff rate quotas (TRQs) to help the partner country make up for lost exports.
- Expedite certain US export regulatory processes, including for export licensing (under the Export Administration Regulations), to facilitate exports to the partner country.
- Expedite regulatory processes for importing goods into the US from the partner country.
- Request Congress provide additional appropriations for aid, export financing, and sovereign loan guarantees to the partner country.
- Expedite the approval of export financing by waiving policy requirements.
- Increase US import tariffs or change TRQs on the adversary country.

The amended version of the bill alters the definition of economic coercion slightly from the original, defining it as "a situation in which a country or jurisdiction applies or threatens to apply a measure affecting trade or investment in an arbitrary, capricious, or non-transparent manner in order to prevent or obtain the cessation, modification or adoption of a particular act by another country or jurisdiction, thereby interfering in the legitimate sovereign choices of that country or jurisdiction." The original bill, as introduced in January 2023, had used the definition "actions, practices, or threats undertaken by a foreign adversary to unreasonably restrain, obstruct, or manipulate trade, foreign aid, investment, or commerce in an arbitrary, capricious, or non-transparent manner with the intention to cause economic harm to achieve strategic political objectives or influence sovereign political actions."

[39] "Countering China's coercive diplomacy," Australian Strategic Policy Institute (February 23, 2023), accessible here: https://www.aspi.org.au/report/countering-chinas-coercive-diplomacy.

[40] "Council adopts a regulation to protect the EU from third-country economic coercion," European Council, October 23, 2023, accessible here: https://www.consilium.europa.eu/en/press/press-releases/2023/10/23/trade-council-adopts-a-regulation-to-protect-the-eu-from-third-country-economic-coercion/.

To implement these anti-coercion actions, the president would make a determination that a country is the target of economic coercion, inform and consult Congress, and publish the determination in the Federal Register. These determinations would sunset at two years and can be overturned by a joint resolution of Congress or presidential revocation. The Secretary of State would also have the authority to issue an expedited determination so the government can provide aid faster, though this method would not allow changes to tariff lines.

This determination can be made for any country, including US allies and other jurisdictions that trade with the United States. Under the original bill, the source of the economic coercion must be a country that the United States has designated as a "foreign adversary" under section 8(c)(2) of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1607(c)(2)). This is defined as any "foreign government or foreign nongovernment person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons" and typically includes the People's Republic of China (including Hong Kong), Cuba, Iran, North Korea, Russia, and Venezuela. Under the House's amended version of the bill, in contrast, the source of economic coercion can only be China.

While approving the bill, the House Foreign Affairs Committee made several changes, adding a few constraints on the new authorities the bill would give the president and contemplating more tools the United States could use to deter coercion. These changes include refining the definition of economic coercion; targeting the bill more specifically at China; clarifying elements of the Congressional review process; requiring that a foreign country targeted by economic coercion request US assistance before the president can act; and adding a new provision encouraging the president to use export controls, sanctions, anti-boycott authorities, and the recently created Securing the Information and Communications Technology and Services Supply Chain rules (ICTS rule) against the coercing country. Further amendments to the bill are likely as it makes its way through Congress.

Changes to the bill since its last consideration in 2022

The Countering Economic Coercion Act was originally introduced during the 117th Congress in July 2022, but never moved forward. The 2023 version of the bill covers most of the same general principles as the 2022 version, but there are several notable changes that the bill's sponsors made following consultations with the Executive Branch and the private sector. The 2023 version adds more emphasis on coordinating the actions with allies, introduces the process for expedited determinations by the Secretary of State, and adds details on Congressional oversight.

The most significant changes, however, are to the tariff powers. The 2023 version of bill adds a new provision authorizing the president to apply retaliatory tariffs on the adversary country. This unconstrained authority to raise tariffs, which was not in the previous version of the bill, may be the most expansive power granted to the president under the 2023 version. In contrast to that, the president's authority to reduce tariffs on the partner country is significantly curtailed in the 2023 version. The new bill allows the president to lower tariffs only on products that would be eligible for the Generalized System of Preferences (GSP) (Section 503 of the Trade Act of 1974 (19 U.S.C. 2463)).[41] It also requires that these products not be covered by antidumping or countervailing duties and that at least 35% of the products' value originate in the partner country. These significant limitations contrast starkly with the 2022 version of the bill, which had no limitations on the scope of these tariff changes.

[41] Details on GSP coverage are accessible here: https://ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preferences-gsp/gsp-program-i-0.

Trade Actions

Section 232

United States and European Union Extend Section 232 Steel and Aluminum Tariff Truce as Negotiations on Permanent Settlement Falter

The United States and the EU have agreed to extend their truce on the Section 232 steel and aluminum tariffs, as negotiations on a permanent settlement to the dispute have faltered. The new agreement will maintain the US tariff-rate quota (TRQ) on imports from the EU until the end of December 2025 and prevent the reimposition of EU retaliatory tariffs until the end of March 2025.

The Section 232 tariffs and EU retaliatory measures had been set to resume in 2024, following the two sides' failure to reach agreement on the Global Arrangement on Sustainable Steel and Aluminum (GASSA) by the October 2023 deadline. The extension likely means that a final settlement to the Section 232 tariffs is delayed until after the US presidential elections in November 2024. Steel industry concerns are high on the election agenda and delaying the settlement until after may create more political space for compromise.

European Union Delays Resumption of Retaliatory Tariffs

The EU issued its extension first, announcing on December 18, 2023, that it had decided to maintain suspension of retaliatory tariffs until March 31, 2025.[42] In its statement, the EU said it would "continue to engage constructively with the US to preserve its legal rights and remove US 232 tariffs on EU exports for good." The EU further noted in its implementing regulation that "[t]he Commission should keep the suspension under review in light of developments, such as those that could worsen the situation for the Union exports that remain subject to the safeguard measures of the United States, including the TRQs."[43] The documents restate the EU's position that the Section 232 tariffs conflict with the United States' WTO commitments.

The EU's retaliatory tariffs would have been reimposed on January 1, 2024, had the parties not agreed to an extension. The tariffs range to as high as 50%. When originally implemented, the tariffs covered €2.8 billion in annual EU imports from the United States.[44]

United States Extends the Tariff-Rate Quota

The United States Trade Representative (USTR) acknowledged that the parties had reached an extension agreement in a December 19, 2023, statement, characterizing the extension as necessary to create more time for negotiations on GASSA.[45] That said, the Biden administration did not take official action to implement the extension

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[42] "EU prolongs tariff suspension for US products related to the steel and aluminium dispute," European Commission, December 19, 2023, accessible here: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6713.

[43] "Commission Implementing Regulation (EU) 2023/2882 of 18 December 2023 suspending commercial policy measures concerning certain products originating in the United States of America imposed by Implementing Regulations (EU) 2018/886 and (EU) 2020/502," accessible here: https://eur-lex.europa.eu/eli/reg_impl/2023/2882/oj.

[44] See the original implementing regulations, "Commission Implementing Regulation (EU) 2018/886 of 20 June 2018 on certain commercial policy measures concerning certain products originating in the United States of America and amending Implementing Regulation (EU) 2018/724," accessible here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2018.158.01.0005.01.ENG&toc=OJ%3AL%3A2018%3A158%3ATOC, and "Commission Implementing Regulation (EU) 2020/502 of 6 April 2020 on certain commercial policy measures concerning certain products originating in the United States of America," accessible here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.109.01.0010.01.ENG&toc=OJ%3AL%3A2020%3A109%3ATOC#ntr8-L_2020109EN.01001001-E0008, for the covered products and additional tariff rates.

[45] "Statement from Ambassador Katherine Tai on Continued Suspension of European Union Tariffs on U.S. Goods," USTR, December 19, 2023, accessible here: https://www.ustr.gov/about-us/policy-offices/press-office/press-releases/2023/december/statement-ambassador-katherine-tai-continued-suspension-european-union-tariffs-us-goods.

until the next week when US Customs and Border Protection (CBP) announced interim measures to extend TRQ filings on December 26, 2023, and then the White House issued Presidential Proclamations for the extension on December 28, 2023. If the TRQs had expired, the Section 232 25% steel tariff and 10% aluminum tariff would have reentered effect on US imports from the EU on January 1, 2024.

The TRQs have allowed 3,300,000 metric tons of steel, 366,040 metric tons of semi-finished wrought aluminum, and 18,000 metric tons of unwrought aluminum from the EU to enter the United States tariff-free annually. USTR based these quotas on historical trade volumes. Current trade levels remain higher than the quota, however, leaving some EU exporters still facing tariffs. Certain EU exports are also subject to exclusions from the Section 232 actions, allowing some EU shipments to enter the United States without paying the tariffs or counting towards the quotas. Given that trade levels exceed the quota levels, preserving these exclusions under the extension was an important goal for the EU's negotiators.

The Presidential Proclamations

The Presidential Proclamations issued on December 28, 2023, extend the current TRQ arrangements until December 31, 2025.[46] The Proclamations set the same annual quota levels for 2024 and 2025 as were previously set for 2022 and 2023, noted above. According to the Biden administration, these quota limits are an effective alternative for restraining EU exports and protecting the US industry while the discussions on addressing non-market excess capacity and greenhouse gas emissions reduction continue.

The previously granted Section 232 exclusions for EU exporters are similarly extended. According to the Proclamations, the United States "will renew for 2 calendar years all exclusions that were utilized to import steel products free from Section 232 tariffs from the EU in Fiscal Year 2021 and the first quarter of calendar year 2022." The Department of Commerce is responsible for issuing the extended exclusions, and according to CBP, the list will be available in the Automated Commercial Environment (ACE) portal on January 4, 2024.[47] Imports that exceed the quota levels and that are not subject to exclusions will remain subject to the Section 232 tariffs.

Commenting on the Proclamations, USTR said the action will allow the parties to "continue negotiations on a forward-looking, high-standard arrangement, while providing predictability and stability to steel and aluminum workers and their families on both sides of the Atlantic."[48] USTR's statement also repeated the argument that protecting the US steel and aluminum industries "is vital to U.S. national security, and our efforts with trading partners, including the EU, will continue to be guided by this tenet." USTR has maintained that the Section 232 actions are consistent with the United States' WTO commitments through the General Agreement on Tariffs and Trade's (GATT) Article XXI national security exception. The EU and other US trade partners disagree with this interpretation. In December 2022, the WTO Dispute Settlement Body sided with these objections and determined the Section 232 tariffs are not justified under Article XXI.[49] The panel decision is pending appeal and will remain pending indefinitely because of the United States' boycott of Appellate Body appointments.

[46] "A Proclamation on Adjusting Imports of Steel Into the United States," accessible here: https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/28/a-proclamation-on-adjusting-imports-of-steel-into-the-united-states-5/, and "A Proclamation on Adjusting Imports of Aluminum Into the United States," accessible here: https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/28/a-proclamation-on-adjusting-imports-of-aluminum-into-the-united-states-5/.

[47] "CSMS # 58853159 - INFORMATION: 2024 European Union Tariff Rate Quota Steel and Aluminum Interim Notice," accessible here: https://content.govdelivery.com/bulletins/gd/USDHSCBP-3820727?wgt_ref=USDHSCBP_WIDGET_2.

[48] "Statement from Ambassador Katherine Tai on Steel and Aluminum Tariff Rate Quota Extension," USTR, December 28, 2023, accessible here: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/december/statement-ambassador-katherine-tai-steel-and-aluminum-tariff-rate-quota-extension.

[49] DS544: *United States — Certain Measures on Steel and Aluminium Products*, accessible here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm.

Interim customs guidance

Before the issuance of the Presidential Proclamations, CBP issued interim bulletins for the 2024 EU TRQ processes on December 26, 2023.[50] The interim action will allow shipments to continue entering the United States under the quota after January 1, 2024. The CBP's guidance explains that the quota entries will be put in a "hold" status and will receive a "quota pending" message in ACE. When CBP finalizes the 2024 quota system and releases the quota hold, it will accept entries on a first come, first served basis until the quotas are filled. CBP is advising traders to follow the existing 2023 entry guidance until it finalizes the 2024 program.

Future of the Global Arrangement on Sustainable Steel and Aluminum

The United States and EU originally negotiated the Section 232 truce in October 2021 to make way for negotiating a permanent settlement. The settlement was to be a new global tariff system on steel and aluminum – GASSA – that would replace the Section 232 tariffs, but the parties were never in alignment on the details of the plan.

The absence of tangible outcomes on GASSA has been attributed to the deep policy division between the two sides, which may be too profound to bridge. The United States has stated that it will only end its import restrictions on EU steel and aluminum if the EU commits to imposing a common tariff as part of GASSA. The United States argues that non-market economies are saturating the global metals market with subsidized metals and that this overproduction also leads to excess greenhouse gas emissions. Under USTR's plan, the proposed GASSA tariffs would be applied to all countries outside the arrangement based on relative GHG emissions. The United States and EU would be the founding members of GASSA, but the club would also be open to other countries that meet certain qualifying conditions.

On the other side, the EU has emphasized its obligation to adhere to international trade rules, offering to initiate a countervailing duty investigation on subsidized non-market producers rather than adopt a global tariff, and continuing to rely on its Emissions Trading System and Carbon Border Adjustment Mechanism for addressing climate change concerns. USTR appeared unwilling to completely lift the Section 232 tariffs in response to the EU's compromise offer in October 2023 while the EU remained opposed to the more aggressive approach desired by USTR.

As USTR repeated in its statement on the December TRQ extension, the United States is still seeking a GASSA settlement that will address both carbon emissions in the global steel and aluminum industries and non-market excess capacity. The EU's announcement of the extension recognized USTR's negotiating objectives, stating that work will continue "on addressing global overcapacity and decarbonisation of steel and aluminium sectors in the context of discussions on a Global Arrangement on Sustainable Steel and Aluminium."

As the negotiations continue, the US International Trade Commission (ITC) is studying methods to measure product-level greenhouse gas emissions for the steel and aluminum industry.[51] USTR requested the ITC study on June 5, 2023, saying the results will "inform discussions with the European Union (EU) regarding the Global Arrangement on Sustainable Steel and Aluminum."[52] ITC's work is necessary because the United States currently does not have emissions data detailed enough to implement an emissions-based tariff system like GASSA. USTR asked ITC to

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[50] "QB 24-799 2024 Interim Section 232 Aluminum Articles of European Union (EU) Member Countries," accessible here: https://www.cbp.gov/trade/quota/bulletins/qb-24-799-2024, and "QB 24-699 2024 Interim Section 232 Steel Mill Articles of European Union (EU) Member Countries," accessible here: https://www.cbp.gov/trade/quota/bulletins/qb-24-699-2024.

[51] "Greenhouse Gas Emissions Intensities of the U.S. Steel and Aluminum Industries at the Product Level," 88 FR 43633 (July 10, 2023), accessible here: https://www.federalregister.gov/documents/2023/07/10/2023-14500/greenhouse-gas-emissions-intensities-of-the-us-steel-and-aluminum-industries-at-the-product-level.

[52] USTR letter to the ITC, June 5, 2023, accessible here: https://ustr.gov/sites/default/files/Section%20332%20Request%20Letter_Steel%20and%20Aluminum%20GHG%20Emissions.docx.pdf.

complete the study by January 2025, suggesting that technical implementation of GASSA is still at least several years away even if the parties can resolve their differences.

Trade Agreements

No developments

Petitions & Investigations

Investigations

Commerce Sustains Antidumping and Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from Japan, Korea, and Taiwan in Fourth Sunset Review

On December 7, 2023, the US Department of Commerce (Commerce) published notice of continuation of the antidumping duty (ADD) and countervailing duty (CVD) orders on stainless steel sheet and strip in coils (SSSSC) from Japan (ADD), Korea (AD and CVD), and Taiwan (ADD).[53] This follows parallel reviews by Commerce and the International Trade Commission which found that revoking the orders would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to the US industry. With the reviews completed, Commerce has ordered CBP to continue collecting the ADD and CVD cash deposits at the rates in effect at the time of the subject goods' entry. This is the fourth five-year review for the ADD and CVD orders, which Commerce originally implemented in July 1999. Commerce intends to initiate the next sunset review not later than 30 days prior to the fifth anniversary of the US International Trade Commission's (ITC) last determination.

The final decision follows the ITC's determination, published on October 24, 2023, that revoking the existing ADD and CVD orders on SSSSC from Japan, Korea, and Taiwan would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time.[54] The ITC had instituted the review on September 1, 2022, and voted to conduct full reviews for all three countries after receiving adequate responses from the interested parties.

Commerce issued the final findings of its expedited fourth sunset review of the ADD orders on December 2, 2022, finding that revocation of the ADD orders on SSSSC from Japan, Korea, and Taiwan would be likely to lead to the continuation or recurrence of dumping.[55] The dumping margins are set at 57.87% for Japan, 58.79% for Korea, and 21.10% for Taiwan. Commerce also completed the expedited review of the Korea CVD order on December 2, 2022, finding that revoking the order would likely lead to a continuation or recurrence of the countervailable subsidy.[56] Commerce set the CVD subsidy rates at 0.54% for INI/BNG (formerly Inchon, now known as Hyundai), 0.67% for DMC, 4.64% for Taihan, and 0.63% for the all-others rate.

Covered product

The scope of the orders covers stainless steel sheet and strip in coils from Japan, Korea, and Taiwan. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may

[53] "Stainless Steel Sheet and Strip in Coils From Japan, the Republic of Korea, and Taiwan: Continuation of Antidumping Duty Orders and Countervailing Duty Order," 88 FR 85232 (December 7, 2023), accessible here: https://www.federalregister.gov/documents/2023/12/07/2023-26884/stainless-steel-sheet-and-strip-in-coils-from-japan-the-republic-of-korea-and-taiwan-continuation-of.

[54] "Stainless Steel Sheet and Strip From Japan, South Korea, and Taiwan Determinations," 88 FR 73043 (October 24, 2023), accessible here: https://www.federalregister.gov/documents/2023/10/24/2023-23401/stainless-steel-sheet-and-strip-from-japan-south-korea-and-taiwan-determinations.

[55] "Stainless Steel Sheet and Strip in Coils From Japan, the Republic of Korea, and Taiwan: Final Results of Expedited Fourth Sunset Reviews of Antidumping Duty Orders," 87 FR 74133 (December 2, 2022), accessible here: https://www.federalregister.gov/documents/2022/12/02/2022-26241/stainless-steel-sheet-and-strip-in-coils-from-japan-the-republic-of-korea-and-taiwan-final-results.

[56] "Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results of Expedited Sunset Review of the Countervailing Duty Order," 87 FR 74130 (December 2, 2022), accessible here: https://www.federalregister.gov/documents/2022/12/02/2022-26244/stainless-steel-sheet-and-strip-in-coils-from-the-republic-of-korea-final-results-of-expedited.

also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

The product is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. While HTSUS subheadings are provided for convenience and for customs purposes, Commerce's full written description of the subject merchandise is dispositive.

Commerce Issues Final Results of the Antidumping Administrative Review of Glycine from Japan

On December 20, 2023, Commerce issued the final results of the 2021-2022 administrative review of the ADD Order on glycine from Japan.[57] Commerce found a 0.00% dumping margin for the sole respondent (Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd.) during the period of review, June 1, 2021, through May 31, 2022. The result matches the preliminary results issued on July 7, 2023,[58] though Commerce notes in the final results that it had "made changes to the calculation of indirect selling expenses, U.S. credit expense and inventory carrying cost, and financial expense." All other Japanese exporters are still subject to the all-others rate from the initial investigation (53.66%) unless they already received a separate rate in the investigation or subsequent reviews.

Covered product

The merchandise covered by the ADD order is glycine at any purity level or grade. This includes glycine of all purity levels, which covers all forms of crude or technical glycine including, but not limited to, sodium glycinate, glycine slurry and any other forms of amino acetic acid or glycine. Subject merchandise also includes glycine and precursors of dried crystalline glycine that are processed in a third country, including, but not limited to, refining or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the in-scope glycine or precursors of dried crystalline glycine. Glycine has the Chemical Abstracts Service (CAS) registry number of 56-40-6. Glycine and glycine slurry are classified under HTSUS subheading 2922.49.43.00. Sodium glycinate is classified in the HTSUS under 2922.49.80.00.

[57] "Glycine From Japan: Final Results of Antidumping Duty Administrative Review; 2021-2022," 88 FR 88052 (December 20, 2023), https://www.federalregister.gov/documents/2023/12/20/2023-27949/glycine-from-japan-final-results-of-antidumping-duty-administrative-review-2021-2022#footnote-4-p88053.

[58] "Glycine From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2021-2022," 88 FR 43273 (July 7, 2023), https://www.federalregister.gov/documents/2023/07/07/2023-14393/glycine-from-japan-preliminary-results-of-antidumping-duty-administrative-review-2021-2022.

Commerce Issues Final Results of the Antidumping Administrative Review for Nickel-Plated Steel Products from Japan

On December 8, 2023, Commerce published the final results of its ADD administrative review on diffusion-annealed, nickel-plated flat-rolled steel products (nickel-plated steel products) from Japan.[59] The final results maintain the finding that the only company still subject to the review, Toyo Kohan Co., Ltd. (Toyo Kohan), made sales of the subject merchandise at less than normal value during the period of review. However, the final results also made changes to the pricing calculations, lowering the weighted-average dumping margin for Toyo Kohan to 0.92%.

Commerce published the preliminary determination for the administrative review on June 6, 2023, finding sales at less than normal value for Toyo Kohan and rescinding its reviews for Nikken Las Industry Co., Ltd. (Nikken) and Taiyo Manufacturing Co., Ltd. (Taiyo).[60] Commerce had originally announced the administrative reviews for Toyo Kohan, Nikken, and Taiyo on July 14, 2022, based on requests by interested parties for review. On October 4 and 5, 2022, however, the domestic party that requested the reviews for Nikken and Taiyo withdrew its request and those reviews were ended. For Toyo Kohan, the preliminary weighted-average dumping margin had been set at 57.32%, significantly higher than the recalculated dumping margin in the final results. Toyo Kohan's original margin in the first antidumping order in 2014 was 45.42%.[61] The all-others rate remains at 45.42%.

Covered product

The nickel-plated steel subject to this order are "flat-rolled, cold-reduced steel products, regardless of chemistry; whether or not in coils; either plated or coated with nickel or nickel-based alloys and subsequently annealed (i.e., "diffusion-annealed"); whether or not painted, varnished or coated with plastics or other metallic or nonmetallic substances; and less than or equal to 2.0 mm in nominal thickness." Most of these products enter the United States under HTSUS subheadings 7212.50.0000 and 7210.90.6000, but may also enter under 7210.70.6090, 7212.40.1000, 7212.40.5000, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.90.0010, 7220.90.0015, 7225.99.0090, and 7226.99.0180. While HTSUS subheadings are provided for convenience and for customs purposes, Commerce's full written description of the subject merchandise is dispositive.

[59] "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Final Results of Antidumping Duty Administrative Review; 2021-2022," 88 FR 85590 (December 8, 2023), accessible here: https://www.federalregister.gov/documents/2023/12/08/2023-26936/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-final-results-of-antidumping.

[60] "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review, and Rescission, in Part; 2021-2022," 88 FR 37029 (June 6, 2023) accessible here: https://www.federalregister.gov/documents/2023/06/06/2023-11963/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-preliminary-results-of.

[61] "Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Antidumping Duty Order," 79 FR 30816 (May 29, 2014) accessible here: https://www.federalregister.gov/documents/2014/05/29/2014-12509/diffusion-annealed-nickel-plated-flat-rolled-steel-products-from-japan-antidumping-duty-order.